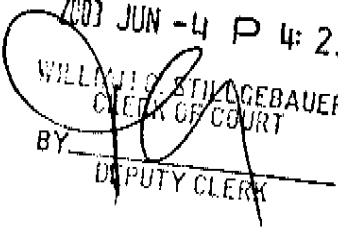


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FILED IN THE  
UNITED STATES  
BANKRUPTCY COURT  
2003 JUN -4 P 4: 23  
WILLIAM C. STUHLGEBAUER  
CLERK OF COURT  
BY  DEPUTY CLERK

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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IN RE:

SIMON TRANSPORTATION SERVICES,  
INC. and DICK SIMON TRUCKING, INC.

Debtors.

Bankruptcy Case No. 02-22906 GEC

Chapter 11

[Jointly Administered]

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**STATEMENT OF ISSUES TO BE PRESENTED and  
DESIGNATION OF RECORD ON APPEAL**

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Appellee Central Refrigerated Services, Inc. ("Central") hereby submits both the Statement of Issues to be presented on appeal and the designation of items to be included in the Record on Appeal, in connection with the appeal filed by Freightliner LLC.



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**STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Central appeals the following issues arising of the Order Denying Motion for Reconsideration entered on April 29, 2003:

1. Does the evidence support a finding that Central paid nothing for the "TradeBack Agreements.?"
2. Does the record support a finding as to the estimated value of the Trade Back Agreements and, if so, did the failure to disclose such value have a material effect on potential bidders for Simon's assets.
3. Does the record support a finding that the assignments of the Trade-Back Agreements to Simon were in the best interests of the estate at the time of the sale.

**DESIGNATION OF RECORD ON APPEAL**

Central designates the following pleadings and transcripts as the Record on Appeal and requests that the same be transmitted to the Bankruptcy Appellate Panel of the Tenth Circuit:

<b>FILING DATE</b>	<b>DOCKET NUMBER</b>	<b>PLEADING DESCRIPTION</b>
03/11/2002	106	Motion for Approval of Sale Substantially All of the Debtors' Assets and to Approve Assumption and Assignment of Leases and Executory Contracts Filed by Simon Transportation Services Inc. and Dick Simon Trucking, Inc. (mjo,) (Entered: 03/12/2002)
03/11/2002	107	Motion for an Order approving: (1) Bidding and Auction Procedures and Sale Date for Sale of Assets; (2) the Form of Bidding, Auction and Sale Notice; and (3) The Scheduling of an Expedited Hearing on Motion for Sale Procedures, Notice, and Sales Hearing Filed by Simon Transportation Services Inc. and Dick Simon Trucking, Inc. (mjo,) (Entered: 3/12/2002)

03/25/2002	206	Order Re: Motion for an Order approving: (1) Bidding and Auction Procedures and Sale Date or Sale of Assets; (2) the Form of Bidding, Auction and Sale Notice; and (3) The Scheduling of an Expedited Hearing on Motion for Sale Procedures, Notice, and Sales Hearing (related document(s) <u>107</u> (mkh) (Entered: 03/25/2002)
03/25/2002	228	Notice of Filing Asset Purchase Agreement Relating to the Stalking Horse Bid Filed by Paul W. Werner on behalf of Central Freight Lines, Inc., (fsl.) (Entered: 03/26/02)
04/04/2002	319	Support Document Re: Supplement to Central Freight Lines, Notice of filing Asset Purchase Agreement Relating to the Stalking Horse Bid Filed by Central Freight Lines, Inc. (related documents(s) 228). (mkh,) (Entered: 04/05/2002)
04/09/2002	342	Motion to Assume and Assign Certain Contracts. Filed by Central Refrigerated Service, Inc. (fsl), (EOD: 04/10/2002).
04/09/2002	344	Motion to Assume and Assign Certain Contracts. Filed by Central Refrigerated Services, Inc. (fsl,) (Entered: 04/10/2002)
04/09/2002	344	Notice of Hearing Re: Filed by Central Refrigerated Service, Inc. (related document(s) <u>344</u> ). Hearing scheduled for 4/22/2002 at 11:00 AM at US Bankruptcy Court. (fsl,) (Entered: 04/10/2002)
04/09/2002	345	Joint Motion of Debtors and Central Refrigerated Service, Inc. to Assume and Assign Certain Contracts. Filed by Central Refrigerated Service, Inc. (fsl,) Modified on 4/23/2002 (fsl.). Entered: 04/10/2002)
04/12/2002	361	Motion to Assume and Assign Certain Contracts Under 11 U.S.C 365; Filed by Central Refrigerated Service, Inc., Simon Transportation Services, Inc., (nas,) (EOD: 04/15/2002).

04/15/2002	375	Joint Motion of Debtors & Central Refrigerated Service, Inc. to Assume & Assign Certain Contracts under 11 USC (365) Filed by Central Refrigerated Service, Inc. (smh,) (Entered: 04/16/2002)
04/22/2002	407	Order Pursuant to Motion To Assume/Reject (Related Doc <u>106</u> ), pursuant to Motion To Sell (Related Doc # <u>106</u> ) Motion for Approval of Sale Substantially All of the Debtors' Assets and to Approve Assumption and Assignment of Leases and Executory Contracts Filed by Simon Transportation Services Inc. and Dick Simon Trucking, Inc. and Granting related Relief. (bfg,) (Entered: 04/22/2002)
04/23/2002	417	Order Granting (A) Granting Joint Motion of Debtors and Central Refrigerated Services; (B) Authorizing Assumption and Assignment of Executory Contracts (Vendor Contracts); and (C) Granting Related Relief. (Related Doc <u>345</u> ) (fsl,) (Entered: 04/23/2002)
05/23/2002	418	Order (A) Granting Joint Motion of Debtors and Central Refrigerated Service (B) Authorizing Assumption and Assignment of Executory Contracts ( <u>Insurance Policies</u> ); and (C) Granting Related Relief. (Related Doc # <u>378</u> ) (fsl,) (EOD: 04/23/2002)
04/23/2002	419	Order (A) Granting Joint Motion of Debtors and Central Refrigerated Service (B) Authorizing Assumption and Assignment of Executory Contracts ( <u>Customer Contracts</u> ); and (C) Granting Related Relief. (Related Doc # <u>342</u> ) (fsl,) (EOD: 04/23/2002)
04/23/2002	420	Order (A) Granting Joint Motion of Debtors and Central Refrigerated Service (B) Authorizing Assumption and Assignment of Executory Contracts ( <u>Owner/Operator Contracts</u> ); and (C) Granting Related Relief. (Related Doc # <u>344</u> ) (fsl,) (EOD: 04/23/2002)

05/02/2002	453	Motion for Reconsideration of April 22, 2002 Orders Authorizing Sale, etc. and Approving Assumption and Assignment of Executory Vendor contracts, etc. and Exclusion of the Freightliner Companies from the Effects of those Orders Filed by Freightliner LLC (related documents(s): <u>407</u> , <u>417</u> ). (kmc) (Entered: 05/03/2002)
05/02/2002	454	Memorandum in Support Filed by Freightliner LLC (related document(s) <u>453</u> ). (kmc,) (Entered: 05/03/2002)
07/19/2002	641	Supplemental Motion to Assume and Assign (1) Agreement Between Dick Simon Trucking and Freightliner(s) Agreement for Conditional Commitment to Repurchase #2000-00366, (3) Agreement for Conditional Commitment to Repurchase #2001-00013 and (4) Agreement for Conditional Commitment to Repurchase #2001-00014 Pursuant to 11 U.S.C. 365 Filed by Simon Transportation Services Inc. (kmc,) (BOD: 07/22/2002)
07/19/2002	642	DBS Preliminary Response to Memorandum of Points and Authorities Supporting Freightliner's Motion for Reconsideration of April 22, 2002 Orders Authorizing Sale, etc. and Approving Assumption and Assignment of Executory Vendor Contracts, etc., and Exclusion of the Freightliner Companies from the Effects of those Orders Filed by Simon Transportation Services Inc. (related document(s) <u>454</u> ). (kmc,) (BOD: 07/22/2002).

08/20/2002	699	Order Rescheduling Hearing. Joint Motion of Debtors and Central Refrigerated Service; Authorizing Assumption and Assignment of Executory Contract; Granting Related Relief (Contracts Order) Hearing Scheduled for 8/26/02 at 10:00 A.M. at U.S. Bankruptcy Court. Debtors' Supplemental Motion to Assume and Assign, Agreement between Dick Simon Trucking and Freightliner, Agreement for Conditional Commitment to Repurchase #2001-00013, and Agreement for Conditional Commitment to Repurchase # 2001-00014 . Hearing Rescheduled for 9/5/02 at 10:00 A.M. at U.S. Bankruptcy Court (related document(s)[MEJ] (fsl,) (BOD: 08/20/2002)
08/22/2002	701	Response to debtors preliminary response to Freightliner's May 5, 2002 Motion for Reconsideration. Filed by Freightliner LLC (related document(s) <u>674</u> . (mkh,) (BOD: 08/23/2002)
08/22/2002	702	Debtor's Response/Objection (Submission) (related document(s) <u>453</u> , <u>417</u> (jtt,) (BOD: 08/23/2002)
08/23/2002	704	Memorandum in Opposition To Filed by Central Refrigerated Service, Inc. to Freightliner's Motion for (1) Reconsideration of 4/22/02 Orders Authorizing Sale, etc. and approving Assumption and Assignment of Executory Vendor Contract, and (II) Exclusion of Freightliner companies From the Effects of Those Orders (related document(s) <u>453</u> ). (mjo,) (BOD: 08/26/2002)
08/26/2002	711	Debtors' supplemental submission Document Re: the notice issue presented by Freightliner's Motion for reconsideration. (mkh,) (BOD: 08/27/2002)
08/27/2002	710	Order Granting Motion for Reconsideration of April 22, 2002 Order Pursuant to 105(a) 363, 365 AND 1146 of the Bankruptcy Code: Authorizing the Sale of Substantially all of the Dbs Assets to Central Refrigerated Service, Inc. Free and Clear of Liens, Claims, Interests and Encumbrances, Approving the Asset Purchase Agreement and Granting Related Relief (Related Doc <u>453</u> ) (kmc,) (BOD: 08/27/2002)

09/27/2002	755	Response to Freightliner's Memorandum of Points and Authorities Supporting its Objection to the Dbs' Supplemental Motion for Authority to Assume and Assign Trade-Backs to Central Filed by Simon Transportation Services Inc. (related document(s) <u>454</u> ). (kam,) (BOD: 09/30/2002)
10/16/2002	777	Memorandum in Support of Filed by Central Refrigerated Service, Inc. (related document(s) <u>755</u> ). (bfg,) (BOD: 10/17/2002)
10/17/2002	777	Memorandum in Opposition To Filed by Central Refrigerated Service, Inc. (related document(s) <u>755</u> (bfg,) (BOD: 10/17/2002)
10/18/2002	782	Response to Response to Freightliner's Memorandum of Points and Authorities Supporting its Objection to the Dbs' Supplemental Motion for Authority to Assume and Assign Trade-Backs to Central Filed by Simon Transportation Services Inc. Filed by Freightliner of Utah, L.L.C. (related document(s) <u>755</u> , <u>704</u> ). (kam,) EOD: 10/21/2002)
10/18/2002	785	Memorandum in Support of Filed by Freightliner LLC, Freightliner of Utah, L.L.C. (related document(s) <u>783</u> ). Unsigned order not FILED UNDER SEAL. (bfg,) Modified on 2/13/2002 Ott.). (BOD: 10/21/2002)

10/21/2002	Minute Entry	Minute Entry Findings of Fact and conclusions of Law were made on the record. The court finds that the agreements fall within the definition of an executory contract. The court finds that the agreements were not a part of the April 8, 2002 sale. Without consideration to support assignment of the Agreements, the Court finds that the debtor has not properly exercised its business judgment and the assignment is not in the best interest of the estate and the court denies the motion without prejudice. Having denied the motion to assign the court has determined a method by which the court will be assured that fair consideration is paid the estate for assignment of the agreements. An auction should be conducted inviting Central, Freightliner and any other party interested in bidding to participate. The Court appoints the Unsecured Creditor's Committee to serve as the auctioneer. Use of the Unsecured Creditor's Committee to structure and conduct the auction will guarantee that the sale and assignment is accomplished in an arms length transaction. Re: Appearances: Diana Gibson, Thomas Beckett, Gary Jubber, Peter Billings, Weston Harris, Mark Thornhill, Scott Goldstein, Michael Emery; (related document(s) <u>641</u> . (th.) (BOD: 10/21/2002
12/03/2002	852	Order Denying Without Prejudice Dbs Supplemental Motion to Assume and Assign (1) Agreement between Dick Simon Trucking and Freightliner, (2) Agreement for Conditional Commitment to Repurchase #2000-00366, (3) Agreement for Conditional Commitment to Repurchase #2001-00013, and (4) Agreement for Conditional Commitment to Repurchase #2001-00014 Pursuant to 11 U.S.C. 365 and Authorization of Auction (related document(s) <u>641</u> ) (kmc,) (BOD: 12/03/2002)
12/05/2002	856	Motion for New Trial or, Motion To Stay of Auction Pending Appeal Filed by Central Refrigerated Services, inc. (bfg,) EOD: 12/06/2002)

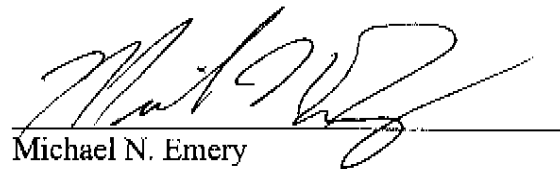


12/13/2002	867	Motion for New Trial/Hearing (related document(s): <u>861</u> Notice of Hearing) filed by Central Refrigerated Service, Inc. (mjo,) (BOD: 12/16/2002)
12/20/2002	877	Order Granting Motion for New Trial (Related Doc <u>856</u> , Granting Motion to Stay Pending Appeal (Related Doc <u>856</u> (fsl,) (EOD: 12/20/2002)
01/14/2002	Transcript of Hearing	Transcript of Hearing. Date of Hearing: 10/21/02 (nas,) Hearing (Entered: 01/15/2003)
02/14/2003	Transcript of 1/17/03 hearing	Transcript of Hearing. Date of Hearing: Jan. 17,2003 (smh,) (BOD: 02/18/2003)
02/14/2003	927	Memorandum On Limited Issue of Whether the Trade-Back Agreements are Executory Contracts -Filed by Unsecured Creditors Committee (smh,) (BOD: 02/18/2003)
02/20/2003	938	Response to Committee's Memorandum on Limited Issue Filed by Chris Farris, Freightliner LLC, Freightliner Market Development Company, Freightliner of Utah L.L.C. (kmc,) (BOD: 02/21/2003)
02/26/03	Transcript of 2/10/03 hearing	Transcript of Hearing. Date of Hearing: 2/10/03 (bfg,) (BOD: 02/26/2003)
04/29/2003	1023	Order Denying Motion To Reconsider (Related Doc #641) Ott,) (BOD: 04/29/2003)
05/07/2003	1029	Notice of Appeal Receipt Number: 196873 Fee Amount \$105 (related documents(s): ~ Order on Motion to Assume/Reject) Filed by Freightliner LLC, Freightliner Market Development Company, Freightliner of Utah, L.L.C. Appellant Designation due by 5/19/2003. Certificate of Readiness Due Date 6/17/2003. (tjc) (BOD: 05/18/2003)
05/09/03	1036	Notice of Appeal Receipt Number: 197209 Fee Amount \$105 (related document(s): <u>1023</u> Order Denying Motion to Reconsider) Filed by Central Refrigerated Service, Inc. Appellant Designation due by 5/22/03. Certificate of Readiness Due Date 6/23/2003. (tjc) (EOD: 05/12/2003)

05/09/2003	1037	Election of Appcal to District Court (related document(s): <u>1036</u> Notice of Appeal) Filed by Central Refrigerated Service, Inc. (tjc) (EOD: 05/12/2003)
01/17/2003 & 02/10/2003 & 2/12/2003		All exhibits admitted during the January 17, 2003, February 10, 2003 and February 12, 2003 hearings on Central Refrigerated, Inc.'s Motion for Reconsideration.

RESPECTFULLY SUBMITTED this 4 day of June, 2003.

RICHIARDS, BRANDT, MILLER  
& NELSON



Michael N. Emery

Wayne Z. Bennett

Attorneys for

Central Refrigerated Service, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was sent first-class mail, postage prepaid, on this 4 day of June, 2003, to the following:

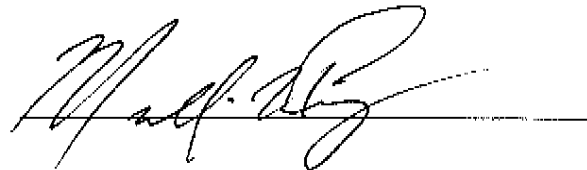
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A handwritten signature in black ink, appearing to read "Mark Thornhill", is written over a horizontal line.

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